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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/648,726

08/26/2003

Ronald L. Mahany

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08/05/2005

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EXAMINER

CANGIALOSI, SALVATORE A

ART UNIT

PAPER NUMBER

3621

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/648,726

Applicant(s)

MAHANY, RONALD L.

Examiner

Salvatore Cangialosi

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 43-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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### Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 43-82 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13, 20, 22-33, 43-49, 50, 52-54 of prior U.S. Patent No. 6,665,536. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are included within the scope of the claims of the prior patent (They are broader version of the patent claim).

Regarding claim 43, which generally corresponds to claim 1 of the patent, the claim omits a housing. Claim 44 is a verbatim copy of patent claim 2. Claim 45 is a verbatim copy of patent claim 3. Claim 46 is a verbatim copy of patent claim 4. Claim 47 is a verbatim copy of patent claim 5. Claim 48 is a verbatim copy of patent claim 6. Claim 49 is a verbatim copy of patent claim 7. Claim 50 is a verbatim copy of patent claim 8. Claim 51 is a verbatim copy of patent claim 9. Claim 52 is a verbatim copy of patent claim 10. Claim 53 is a verbatim copy of patent claim 11. Claim 54 is a verbatim copy of patent claim 12. Claim 55 is a verbatim copy of patent claim 13. Claim 56 is an obvious equivalent of patent claim 10. Regarding claim 57, which generally corresponds to claim 20 of the patent, the claim omits a housing. Claim 58 is a verbatim copy of patent claim 22. Claim 59 is a verbatim copy of patent claim 23. Claim 60 is a verbatim copy of patent claim 24. Claim 61 is a verbatim copy of patent claim 25. Claim 62 is a verbatim copy of patent claim 26. Claim 63 is a verbatim copy of patent claim 27. Claim 64 is a verbatim copy of patent claim 28. Claim 65 is a verbatim copy of patent claim 29. Claim 66 is a verbatim copy of patent claim 30. Claim 67 is a verbatim copy of patent claim 31. Claim 68 is a verbatim copy of patent claim 32. Claim 69 is a verbatim copy of patent claim 33. Claim 70 is an obvious variant of patent claim 22. Regarding claim 71, which generally corresponds to claim 49 of the patent, the claim omits a housing. Regarding claim 72, which generally corresponds to claim 43 of the patent, the claim omits a housing. Claim 73 is an obvious variant of patent claim 44. Claim 74 is an obvious variant of patent claim 45. Claim 75 is an obvious variant of patent claim 46. Claim 76 is an obvious variant of patent claim 47. Claim 77 is an obvious variant of patent claim 48. Regarding claim 78, which generally corresponds to claim 20 of the

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patent, the claim omits a housing. Claim 79 is an obvious variant of patent claims 50 or 52. Claim 80 is an obvious variant of patent claim 53. Claim 81 is an obvious variant of patent claim 53. Claim 82 is an obvious variant of patent claim 54.

3. Claims 72-78 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

Certain claims (72,78) contain the terms "capable of" which is not a positive limitation. (See In re Collier, 158 USPQ 266)

Any inquiry concerning this communication should be directed to Salvatore Cangialosi at telephone number (571) 272-6927. The examiner can normally be reached 6:30 AM to 5:00 PM, Tuesday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell, can be reached at (571) 272-6712.


Any response to this action should be mailed to:

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P.O. Box 1450  
Alexandria, VA 22313-1450

or faxed to (703)872-9306  
Hand delivered responses should be brought to

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401 Dulany Street  
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
SALVATORE CANGIALOSI  
PRIMARY EXAMINER  
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